

## Recent Arbitration Representations

- Won confidential employment arbitration for an **international pharmaceutical company** against its departing senior US executive.
- We obtained an award of nearly \$80 million, which *The Wall Street Journal* described as one of the largest investor arbitration awards ever issued by a FINRA arbitration panel.
- We represented **Ortho-McNeil**, a Johnson & Johnson subsidiary, in a unanimous victory that made an important new law narrowing “manifest disregard of the law” almost to the vanishing point as a ground for district court vacatur of arbitral awards. Some courts have treated this ground as a freestanding warrant to vacate arbitral awards for purported legal error even though it falls outside the statutory criteria in the Federal Arbitration Act. The Seventh Circuit flatly rejected such an approach, reversing the district court’s partial vacatur of the award and remanding for full confirmation of an award that favored Ortho in a dispute over inventorship and ownership of two patent families relating to new biological drugs for the production of red blood cells—products potentially worth billions of dollars in annual sales.
- We won a \$18.5 million dollar AAA/ICDR arbitration award for **Toshiba Corporation** (as Licensor for the DVD6C Patent Licensing Group) in a patent license dispute against Coby Electronics, a manufacturer of DVD video players, for unpaid and underreported royalties.
- On behalf of Koch Industries subsidiaries **INVISTA S.à r.l., INVISTA Technologies S.à r.l., INVISTA North America S.à r.l. (collectively, “INVISTA”)**, Quinn Emanuel obtained a dismissal of an appeal by French chemicals firm Rhodia S.A. (“Rhodia”) from a district court’s denial of Rhodia’s motion to dismiss or stay an action filed by INVISTA in Delaware state court. Weeks before oral argument, defendant Rhodia attempted use a ruling issued in a parallel arbitration proceeding to bolster its appeal before the Third Circuit. However, Quinn Emanuel was able to capitalize on the ruling to convince the Court to dismiss the appeal as moot. The Third Circuit held that a defendant may not obtain a stay of litigation in favor of a foreign arbitration pursuant to the Federal Arbitration Act (the “FAA”) when the arbitral tribunal has already rejected the defendant as a party to the foreign arbitration. The decision allowed INVISTA’s claims against Rhodia to move forward in Delaware state court while the foreign arbitration, involving two Rhodia affiliates and one of the three INVISTA plaintiffs, proceeds simultaneously.

- We obtained a victory in the United States Court of Appeals for the Ninth for **Sequus Pharmaceuticals, Inc.**, a subsidiary of **Johnson & Johnson**. The appeal decided a question of first impression: whether a district court has removal jurisdiction under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. § 201 et seq., over a case in which the defendant raises an affirmative defense related to a foreign arbitral award. In a unanimous published opinion, the Ninth Circuit agreed with Sequus that the removal provision of the New York Convention should be construed broadly (unlike most removal provisions) so that it provides a meaningful shield against litigation that seeks an end run around foreign arbitration. Since Sequus had raised an Israeli arbitral award as part of its affirmative defense of collateral estoppel, the court upheld removal of the case to federal court.
- One of our partners acted for a number of parties in a number of English Copyright Tribunal References to include in the determination of royalties for the download and streaming of music over the internet and the correct royalties to be paid for the use of music videos on music TV.
- We represented **DIRECTV** in a suit against NWS, a former DIRECTV vendor, in a case involving a fraudulent scheme to provide programming to commercial institutions. DIRECTV brought a demand for arbitration in the AAA against NWS for breach of contract, fraud, unfair business practices, and violations of the Cable Communications Policy Act. NWS counterclaimed for breach of contract, unfair business practices, and tortious interference with contract. After a 7-day hearing, we obtained a \$5.6 million judgment on behalf of DIRECTV. The Arbitrator found for our client on every affirmative claim and against NWS on all counterclaims.
- One of our partners acted in ICC proceedings in relation to disputes arising out of the sale of a film library.
- We are acting for a **Russian banking group** in an ICC arbitration in London, governed by English law, arising out of the sale of a banking business for consideration in excess of \$500 million.
- We represented **hedge fund shareholders** in an LCIA arbitration in London, governed by English law. Our clients were in dispute with their joint venture partner in the fund concerning the operation of the fund. The dispute was settled on favorable terms.
- One of our partners acted in a number of FA (English Football Association) arbitrations in relation to the only successful team ground move away from its historic area, and player transfer disputes.
- We represented **Film Finances, Inc.** in an arbitration against Fortis Bank concerning the financing of Spike Lee's latest film, *Miracle at St. Anna*. Fortis Bank claimed that the film did not comply with the financing contracts because it was too long and did not conform to the approved screenplay. We proved that the running time requirement had been waived and that the film was based on the approved screenplay. The arbitrator

awarded Film Finances declaratory relief, dismissed the cross-claim brought by Fortis, and awarded Film Finances its attorney's fees and costs.

- We represented a **global telecommunications company** that is the world's largest manufacturer of mobile cellular handsets in what was probably the largest intellectual property litigation in the world. Among the more than a dozen litigations worldwide were two U.S. arbitrations related to various contractual issues stemming from the companies' fifteen year relationship. We successfully represented our client in the Federal Circuit regarding the standard for arbitrability in one of these matters, which set the standard of review for determining arbitrability, and went on to act as lead counsel in the 8 day hearing that resulted. We were also lead counsel for an arbitration involving multiple claims and cross-claims about various contractual issues, which was subsequently consolidated with a pending Delaware Chancery court case. The parties settled that matter, and the entire international litigation between them, in July 2008 on the first day of trial in the Delaware court, resulting in a very favorable settlement for our client.
- One of our partners acted in LCIA (London Court of International Arbitration) proceedings in relation to disputes relating to petroleum green coke smelting.
- We represented various leading venture capital firms and their top partners in a case brought by the founder of a leading internet company for fraudulent inducement alleging that our clients persuaded him into taking venture capital money that yielded the founder \$5 million rather than selling his internet company for a cash/stock value of what is now \$180 million. After mediation, we agreed to a baseball arbitration with a "high" and "low" award to keep the case out of court and protect our clients' reputations. The arbitration lasted almost two weeks and, in the end, the arbitrator sided with our clients awarding the low award -- a zero verdict.
- We represented the **Academy of Television Arts & Sciences**, in an arbitration against its sister organization, the National Academy. We obtained a permanent injunction from a three-judge arbitration panel preventing the National Academy from improperly creating new Emmy® award categories to recognize user-generated content and programming for broadband distribution and new media platforms like iPods, Blackberries and cell-phones. We then successfully defeated several attempts by the National Academy to challenge and vacate the award in the New York courts.
- One of our partners acted for a number of companies in the PartyGaming group in relation to online gaming, defending international arbitration and court proceedings. The matter covered multiple jurisdictions including the UK, USA, Gibraltar and the BVI.
- We represented **Space Imaging Corporation** (a Lockheed-Martin related company), at the time the world's foremost remote sensing satellite imaging company, in an international dispute involving imagery rights in the European territory of a distributor. We obtained a preliminary injunction preserving our client's property and the status

quo pending the arbitration -- and ultimately proved a number of material breaches of the contracts by the distributor, some of them of a highly technical nature. We obtained an award of millions of dollars in favor of our client for these breaches.

- We represented **Russo Corporation** in an international arbitration proceeding against the Russian airline Aeroflot, seeking recovery of unpaid commissions under a long-term agreement for the leasing of airplanes in Iran. We prevailed in the arbitration and also in a hotly disputed appeal in the Second Circuit of New York, in which Aeroflot unsuccessfully challenged the award as violating US/Iranian regulations restricting the ability of a U.S. company to do business in Iran. The Second Circuit's decision was a significant holding in defining the meaning of "public policy" under the New York Convention as grounds for vacating an arbitration award.
- We represented **Hollis-Eden**, a pharmaceutical company, in connection with an international arbitration dispute involving an agreement pertaining to research on various pharmaceuticals, including steroid compounds, for the treatment of AIDS and related diseases. We obtained a significant permanent injunction in connection with the case.
- We represented the **Los Angeles Times** in a dispute over the design and construction of its state-of-the-art Los Angeles printing plant.
- We represented medical corporations and HMOs, including such companies as **Kaiser Permanente**, in arbitrations of various medical-related disputes.
- We represented private equity firm **The Gores Group** in an arbitration against Vista Equity Partners regarding representations and warranties in a purchase agreement over the sale of a telephone software company. The arbitration ended in a favorable settlement for the Gores Group a week before trial.
- We represented a major reinsurance company in a six week arbitration in which our client faced a claim by film producers for \$50 million in film financing. We won a complete defense.
- We represented the project manager of a large construction project for a casino and luxury hotel in Lima, Peru. Our client faced claims for breach of contract and fraud, giving rise to multi million dollar demands relating to cost overruns and the purported failure to meet the requirements for certification by the hotel operations chain. This was the first ever ICC arbitration conducted in Peru. The arbitration was conducted in Lima pursuant to California law. Our attorneys won on every claim, before a panel consisting of two Peruvian and one Venezuelan arbitrator.
- We represented **Seiko Epson** in one of the largest patent infringement cases ever filed with the International Trade Commission, asserting eleven patents and thirty-one claims against 1,000 different cartridge models sold by twenty-four manufacturers, importers and distributors of aftermarket ink cartridges for resale in the U.S. After a 7-

day trial, the Administrative Law Judge found for our client on every asserted patent and claim, against every single accused product that was adjudicated, and against every respondent that had not already entered into a consent order, and based thereon, it issued a general exclusion order prohibiting all companies, whether or not they were parties to the ITC proceeding, from importing and selling infringing cartridges in the U.S.

- We represented limited partners of a hedge fund in a shareholder derivative arbitration against a hedge fund manager and his stockbroker sister based on claims of systemic fraud through post-execution allocations of securities trades over more than a decade. After an arbitration that spanned seven months, the arbitration panel, in a unanimous opinion, awarded our clients \$75 million in compensatory and punitive damages, which included \$35 million for disgorgement of compensation for the period of the fraud.
- We represented **XM Satellite Radio** in a major international arbitration proceeding involving the question of insurance coverage for XM's two primary broadcast satellites, which had lost power at an accelerated rate because of a design flaw. The arbitration hearings were held in Washington D.C. before a panel of three arbitrators and the amount in dispute was \$117.6 million. We were successful in proving that both satellites had suffered a "constructive total loss", which was heavily disputed. The finding that the satellites had suffered a constructive total loss enhanced the value of settlements with other carriers which were not involved in the arbitration.
- We represented **Oracle Corporation** in an arbitration in which Saudi System sought damages in excess of \$30 million arising out of a joint venture they had entered into in Saudi Arabia. Alleging that Oracle overcharged the joint venture for software licenses, the minority shareholder accused Oracle of breach of contract, tortious interference, breach of fiduciary duty, and unjust enrichment in an international arbitration conducted under Saudi law. Although the shareholder was based in Saudi Arabia, we were able to demonstrate that its claims were not cognizable under Saudi law. At the eleventh hour, the shareholder asserted a new theory accusing Oracle of ghasb, a form of oppression and usurpation denounced in the Qu'ran. Although the Qu'ran and had no published decisions from Saudi courts upon which to rely, we convinced the arbitration panel that ghasb was inapplicable and the panel issued a unanimous 40-page opinion holding that Oracle did not act unfairly towards or usurp any of the shareholder's rights.
- We represented **TRW (now Northrop Grumman)** in a AAA arbitration involving an alleged breach of contract to purchase application specific integrated circuits. We obtained an award in TRW's favor.
- We represented **K. Hovnanian Homes, Inc.**, a publicly-traded national home builder in an arbitration involving the termination of a \$60 million real estate transaction. The arbitrator's decision granted our client a complete victory, including costs and attorneys fees.

- We represented **Carat Interactive** in a AAA arbitration involving claims against it by shareholders of an acquired interactive media company under an "earn out" provision in the stock purchase agreement. The matter settled favorably after our cross-examination of the first witness.
- We represented **Isuzu Motors** in an ICC arbitration against Thermo King to determine whether a project fell under an arbitration clause or whether the client could pursue its claims in court. We obtained a 68-page ruling enabling our client to bring its claims in court.
- We represented the **named inventor on a patent** claiming dental implant assemblies, in an arbitration proceeding against Nobel Biocare, one of the world's leading manufacturers of dental implants. The arbitration included claims for breach of contract, patent infringement and validity of the patent in suit. The matter was administered by JAMS and settled on favorable terms after a full-day *Markman* hearing that included live testimony by the parties and expert witnesses.
- We represented **Nissan Chemical** in an ICC arbitration against DuPont over an exclusivity provision in a contract. We obtained a favorable settlement before the hearing.
- We represented internet start-up company **1GlobalPlace** in an arbitration against VeriSign regarding an "earn-out" provision in a merger agreement. After winning the key issues in the arbitration, we went on to represent 1GlobalPlace in subsequent litigation, resulting in an eventual favorable settlement for 1GlobalPlace on the first day of trial.
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